IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23334 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRABHUBHAI MAGANBHAI PATEL - Petitioner(s)

Versus

GOVERNEMENT OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR GI DESAI for Petitioner(s) : 1,MR SJ AGARWALLA for Petitioner(s) : 1,
MR SP HASURKAR A.G.P. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 17/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

1. Rule. Mr. S.P. Hasurkar learned A.G.P., waives service of rule on

behalf of the respondents. At the request of the learned advocates for the respective parties, the mater is taken up for final disposal today itself.

2. The petitioner had preferred application under Section 28A of the Land Acquisition Act [hereinafter referred to as "the Act"] on 3rd April, 2000, to respondent no. 2, as it appears from annexure-A at page 8 of the compilation, in view of the award made by the concerned Reference Court, dated 6th January, 2000. It also appears from the said document that the copy of the award was forwarded to respondent no. 2 on 21st May, 2000. Respondent no. 2 therefore, came to the conclusion that there was time lapse of 138 days from the date of the award till receipt of its copy by respondent no. 2 from the petitioner. Respondent no. 2 had, therefore, referred the matter to the Government for seeking clarification as to whether the application was within the period of limitation prescribed under Section 28A of the Act. However, the contention of the petitioner is that when the copy of the award is not required to be submitted along with the application under Section 28A of the Act, there is no meaning in seeking any clarification from the Government by respondent no. 2. It is submitted by Mr. Desai learned advocate for the petitioner that in view of the decisions of this Court, when the application is filed under Section 28A of the Act, there is no need for the concerned applicant-claimant to file copy of the award on which reliance is placed. In support of his submission Mr. Desai has placed reliance on the decision delivered by this very Bench in Special Civil Application No.23808 of 2005 rendered on 16th December, 2005 in the case of **Himmatsinh Arjansinh Thakore & Anr. v. State of Gujarat**. We have perused the said judgment. In view of the said decision, we accept the submission of Mr. Desai. In the said decision we have also placed reliance on another judgment of this Court in the case of **Chitubhai Naranbhai Patel v. Special Land Acquisition Officer reported in 2005 (1) G.L.H., at pg.88**. We

have observed as under :-

> "3. Mr Amit Nanavaty, learned Advocate appearing for the petitioners has submitted that the reason advanced by respondent no.2 for rejecting the application is against the proposition of law laid down by this court in several judgments. In support of his say, he has cited a decision rendered by the Division Bench of this court in the case of Chitubhai Naranbhai Patel v. Special Land Acquisition Officer, reported in 2005 (1) GLH 88. In the said decision, the Division Bench has observed as under:
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> > "Production of certified copy of the award along with application as provided under Order 41 R.1 of Civil Procedure Code (i.e. Copy of decree) is not made compulsory either in the Act or in the Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be rejected if the application is filed within three months from the date of the award. However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy is excluded. There may be cases where parties may not be aware of the exact nature of the award of the court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under Section 28A should always be accompanied with the certified copy."
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> Thus, as per the decision of the Division Bench, production of the certified copy along with application under Section 28A of the Act is not required. Mr Nanavaty has also annexed to the petition judgments rendered by the Division Bench which are on the same line. In view of the same, it is obvious that the impugned order passed by respondent no.2 is against the proposition of law laid down by this court. Hence, this order has to be quashed and set aside. Accordingly, the impugned order is quashed and set aside. The matter is remanded to respondent no.2 for his consideration on merits. It would be open to respondent no.2 to examine all the issues involved in the application including the

one of limitation. He shall render the decision within three months from the date of receipt of the writ of this petition."

3. Mr. Hasurkar learned A.G.P., is not in a position to controvert this position. In view of the aforesaid, this petition deserves to be allowed and it is hereby allowed. We now direct the case to be remanded to respondent no. 2 for his decision on merits. It will be open for respondent no. 2 to examine the application from all angles including the angle of limitation and give his decision on merits. We, therefore, direct respondent no. 2 to decide the application under Section 28A of the Act filed by the petitioner as expeditiously as possible and in any case not later than three months from the date of receipt of writ of this petition. Accordingly, the petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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